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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1958

No. 532

SILVIO A. LANZA,

Appellant,

vs.

STATE OF NEW JERSEY, By JOSEPH E. McLEAN,
Commissioner of Conservation and Economic Development,

Appellee.

APPELLANT'S REPLY STATEMENT

VITO F. LANZA,
Counsel and Attorney for Silvio A. Lanza,
Appellant.

THOMAS F. GRIMES, Esq.,
On the Brief.

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STATE OF NEW JERSEY, by JOSEPH E. McLEAN, COMMISSIONER OF CONSERVATION and ECONOMIC DEVELOPMENT,

Appellee.

APPELLANT'S REPLY STATEMENT

(I)

The appellee's Motion to Dismiss and Statement in Opposition charges that the above-entitled appeal is wholly without merit, frivolous, capricious and irresponsible, and designed to delay and harass appellee. The foregoing charges against the appellant and his counsel are, however, not justified by the facts. The questions raised by the appellant received extended discussion in the opinion of Justice Hall in the trial court, which opinion occupies nineteen pages in the appellant's Jurisdictional Statement herein (Exhibit "B", pp. 29-48). The Supreme Court of New Jersey considered the questions presented to be issues of public importance, because, of its own motion, the Supreme Court certified to itself the appeal that the appellant herein had taken to the intermediate appellate tribunal.

After the New Jersey Supreme Court had decided the case in an opinion by Mr. Justice Heher that is printed at pages 13-28 of the appellant's Jurisdictional Statement, the appellant was unable to obtain a stay either from the New Jersey courts or from this Court. The appellee notified appellant to remove from the property in question and proceeded with the trial of the above-entitled action before the Superior Court in Morris County, New Jersey. The trial of the above-entitled action is still in progress and has not been delayed by the appellant because of the pendency of this appeal in this Court. On the contrary, however, the appellee has not diligently proceeded with the presentation of its case.

Consequently, appellee's assertions that the appellant's case is wholly without merit and has been brought up for review solely for purposes of delay and harassment is not in accord with the facts.

It may be well to add that when the action herein came on for trial before the Superior Court in Morris County, the appellant, by appropriate motions to dismiss, raised again for the record all the questions presented on this appeal. However, because the judgment already entered herein may be deemed a final determination on the questions considered by the New Jersey courts herein, even though the trial of this action is still in progress, the appellant prosecuted this appeal in order to protect his right to a review in this Court.

These and other questions, including the impairment of the privileges and immunities of the appellant as a citizen of the United States, the 14th Amendment and possible illegal use of Delaware River waters in contravention of the prior decisions of this Court; are presented as issues that now stand resolved under the Judgment below contrary to Federal Statutes and Authorities.

(II)

Moreover, it is not true, as appellee argues at pages 6-8 of its Statement, that the questions presented have already been decided adversely to appellant by the United States Supreme Court. The appellee brought this action, as appellant has already pointed out, not under the general condemnation law of the State of New Jersey, but under a special act, the so-called "Round Valley Act", tailored by the Legislature solely to fit a particular local situation. This special act, the appellant believes, is so badly drawn as to vest an arbitrary power to condemn in the commissioner of conservation and economic development. Whether or not appellant's challenge of the special statute is sound presents questions which have not been passed upon by this Court and which require examination both of the facts involved and of the applicable state law. Such issues justify an appeal to this Court.

N. Y. Electric Lines v. *Empire City Subway Co.*, 235 U. S. 119 (1914);
Northern Pac. Ry. Co. v. *North Dakota*, 236 U. S. 585 (1915);
Interstate Amusement Co. v. *Albert*, 239 U. S. 560 (1916);
Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389 (1924).

Respectfully submitted,

VITO F. LANZA,
Counsel and Attorney for Appellant.

THOMAS F. GRIMES, Esq.,
On the Brief.